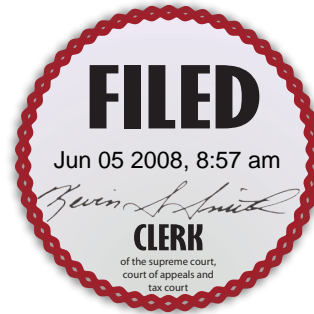


Pursuant to Ind.Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before
any court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the
case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE MARRIAGE OF:)
KIMBERLEE (HARSTAD) BALDWIN,)

Appellant-Petitioner,)

vs.)

No. 18A02-0802-CV-86

LARRY HARSTAD, JR.,)

Appellee-Respondent.)

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable John M. Feick, Judge
Cause No. 18C04-0408-DR-204

June 5, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Kimberlee (Harstad) Baldwin (“Mother”) appeals the order of the Delaware Circuit Court regarding custody and parenting time. Baldwin raises the following issues:

- I. Whether the trial court abused its discretion in denying Baldwin’s request to terminate joint custody.
- II. Whether the trial court abused its discretion in granting Larry Harstad, Jr. (“Father”) unsupervised parenting time.

We affirm.

Facts and Procedural History

Mother and Father were married on August 18, 2001, and one child, J.H., was born of the marriage. Mother filed the petition for dissolution on August 25, 2004. The final decree of dissolution was entered on December 17, 2004. The parties were granted joint custody with Mother maintaining physical custody of J.H. and Father receiving parenting time. The trial court ordered that Father use no drugs or alcohol during parenting time or within twelve hours of parenting time.

Following the decree of dissolution, the parties were in court continuously on issues of child support and parenting time. Chief among these issues is Father’s use of alcohol and his three previous OWI convictions, most recently in the late 1990s. Shortly before the dissolution was finalized, on December 7, 2004, Father attempted to pick up J.H. from Mother’s home. Mother suspected use of alcohol and called the police to administer an alcohol breath test. A scuffle broke out between Mother’s boyfriend and Father. The police arrived and administered a portable breath test that showed father had a BAC of .008.

Father has testified that he has had three prior OWI convictions and that he would regularly drink alcohol. Following the trial court's expressions of concern regarding Father's alcohol intake, Father began to attend Alcoholic's Anonymous meetings on April 29, 2006. He attended thirty-nine meetings in his first thirty days. He had a sponsor and was progressing well. His sponsor testified on Father's behalf at one of the many hearings and did not feel that J.H. would be in any danger with Father. Father continued to attend the AA meetings. At the October 31, 2006 hearing, Father had reduced his attendance to three times per week. According to a report filed by the CASA on January 19, 2007, Father was attending two AA meetings per week.

J.H. has numerous physical and mental problems that includes a number of allergies and disorders such as obsessive-compulsive disorder, Tourette's syndrome, static encephalopathy, conduct disorder, mood disorder, and ADHD. The symptoms can be controlled by medication and therapy, and any brain damage present is not worsening.

On June 22, 2007, Father filed a motion for status hearing. On November 28, 2007, the CASA filed a report with the trial court that recommended:

[T]hat visits between the child and [Father] continue and increase until they are at visitation guidelines. CASA would be willing to submit a specific visitation schedule to the court, if so requested. The CASA would suggest that any visitation ordered be very specific so to minimize any potential conflict or miscommunication between parents.

Appellant's App. at 70.

Following a hearing on Father's motion on December 11, 2007, the trial court denied Mother's motion to modify custody and ordered that joint custody of J.H. be continued with Mother retaining physical custody and parenting time for Father pursuant

to Indiana Parenting Time Guidelines commencing on December 18, 2007. Following trial court's denial of Mother's motion to reconsider, Mother appeals.

Standard of Review

Father failed to file an appellee's brief. As such, we will not undertake the burden of developing arguments for the appellee. Painter v. Painter, 773 N.E.2d 281, 282 (Ind. Ct. App. 2002). Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. Id. Prima facie error is defined as at first sight, on first appearance, or on the face of it. Id.

I. Joint Custody

Mother argues that the trial court abused its discretion when it denied her motion to terminate joint custody. The party seeking to modify a custody order bears the burden of demonstrating that the existing custody order should be altered. Arms v. Arms, 803 N.E.2d 1201, 1208 (Ind. Ct. App. 2004). On appeal, the trial court's decisions regarding custody modifications are reviewed only for an abuse of discretion. Id. "This is so because, as a general proposition, stability and permanence are considered best for the child." Fields v. Fields, 749 N.E.2d 100, 108 (Ind. Ct. App. 2001), trans. denied. An abuse of discretion is found when the trial court's decision is clearly against the logic and effect of the facts and circumstances. Id. We do not judge witness credibility nor reweigh the evidence. Id. We consider only the evidence that supports the trial court's decision. Id.

Mother argues that she and Father were "unable to work together to deal with the special needs of their child." Br. of Appellant p. 10. The paramount concerns in custody

determinations are the best interests of the child. Ind. Code § 31-17-2-21(a)(1) (1998); See also Doubiago v. McClarney, 659 N.E.2d 1086, 1088 (Ind. Ct. App. 1995), trans. denied. Mother does not provide any specific examples of how Mother and Father are unable to communicate and work together to act in their child's best interests.

Mother also argues that the amount of contentious litigation that has sprung from the dissolution shows that joint custody has failed. Again Mother has failed to provide examples of how Mother and Father have been unable to work together. While there have been numerous hearings, many of those hearings involved questions of child support.

The CASA report noted that the relationship between child and Father should be continued as it would be in the best interests of J.H.. By continuing joint legal custody, J.H. will retain the stability and permanence vital to the growth of the parent/child relationship. Also in view of J.H.'s numerous medical issues, changing the custody arrangement may have an adverse affect on J.H.'s future development. We conclude that the trial court did not abuse its discretion when it denied Mother's petition to modify custody.

II. Parenting Time

Mother believes that the trial court abused its discretion when it gave Father unsupervised parenting time pursuant to the Indiana Parenting Time Guidelines. The paramount concern of the court is the best interest of J.H. As noted in Indiana Code section 31-17-4-2 (1998 and Supp. 2007):

The court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child.

However, the court shall not restrict a parent's parenting time rights unless the court finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development.

We will only reverse the trial court on a parenting time issue when the trial court abuses its discretion. Higginbotham v. Higginbotham, 822 N.E.2d 609, 612 (Ind. Ct. App. 2004). If a rational basis exists in the record supporting the trial court's determination, then no abuse of discretion has occurred. Id. at 612-13. We will not reweigh the evidence or judge the credibility of witnesses, but we will look to the facts most favorable to the judgment and the reasonable inferences therefrom. Id. at 613.

Mother argues that unrestricted parenting time is improper because of Father's alcohol problem and J.H.'s special needs. Mother seeks to have us reweigh the evidence and credibility of the witnesses, and we will not do so. The trial court made clear his concerns about Father's alcohol use but determined that Father had taken the steps necessary to allay those concerns. The trial court also determined that J.H. is "entitled to be with his father[.]" As noted above, the CASA's recommendation was that "visits between [J.H.] and [Father] continue and increase until they are at visitation guidelines." Appellant's App. p. 70. We conclude that the trial court did not abuse its discretion when it permitted unsupervised parenting time pursuant to Indiana Parenting Time Guidelines.

Conclusion

We conclude that the trial court did not abuse its discretion when it denied Mother's motion to modify custody. We also conclude that the trial court did not abuse its discretion when it permitted unsupervised parenting time pursuant to Indiana Parenting Time Guidelines.

Affirmed.

MAY, J., and VAIDIK, J., concur.